MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
March 18, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:43 a.m. on Wednesday, March 18, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Senator Michael A. Schneider, Clark County Senatorial District No. 11

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Janet Sherwood, Committee Secretary

OTHERS PRESENT:

Jennifer Lazovich, Focus Property Group; Pardee Homes
Garrett Gordon, Olympia Management Services
Angela K. Rock, Olympia Management Services
Michael E. Buckley, Commissioner, Commission for Common-Interest Communities and Condominium Hotels, Real Estate Division, Department of Business and Industry

Karen D. Dennison, Lake at Las Vegas Joint Venture, LLC; American Resort Development Association
Stuart L. Posselt
Eric Fichtenbaum
Richard L. Martinez, Dayton Valley Community Association
Charlie Duke, Dayton Valley Community Association
Mike Randolph
Jonathan Friedrich
Lindsay Waite, Ombudsman for Owners in Common-Interest Communities, Real Estate Division, Department of Business and Industry
Bill Uffelman, Nevada Bankers Association

CHAIR CARE:
We will open today's hearing before the Senate Judiciary Committee. This room is needed for another hearing beginning at 11 a.m.; we will get in as much as we can this morning.

Members of the Committee have received voluminous e-mails concerning Senate Bill (S.B.) 182 and S.B. 183.

SENATE BILL 182: Makes various changes relating to common-interest communities. (BDR 10-795)

SENATE BILL 183: Revises various provisions governing common-interest communities. (BDR 10-70)

The e-mails do not seem to confine themselves to one bill. Since they are comingled, my plan is to hear both bills at the same time. After the sponsor presents both bills, I ask those who testify to not duplicate comments made by previous witnesses. When you do testify, let us know which bill you are talking about.

SENATOR PARKS:
Not to muddy the waters, but I also have S. B. 253 which is intertwined with this bill. You will be scheduling S.B. 253 in the near future.

SENATE BILL 253: Makes various changes to provisions relating to common-interest communities. (BDR 10-18)

CHAIR CARE:
That is true. We do have some Committee bills and another bill regarding Nevada Revised Statute 116 coming before this Committee. If you want to say you do not like these bills, you are free to make that statement, but we are looking for testimony zeroing in on specific sections of S.B. 182 and S.B. 183.

SENATOR MICHAEL A. SCHNEIDER (Clark County Senatorial District No. 11):
For the record, my name is Mike Schneider, Senate District 11, Las Vegas. I will read my prepared testimony (Exhibit C). It is very clear these are complicated bills and each provision of S.B. 182 is very important. I will take your advice on how we review the bill.

CHAIR CARE:
We will make your handout (Exhibit D, original is on file in the Research Library) part of the record. I am sure others will want to see it now that it is going to be a public document. If there is anyone who wants a copy of this, see the Committee Staff and we will provide that to you.

When you buy into a homeowners' association (HOA), you are on notice when you are given a copy of the covenants, conditions and restrictions (CC&Rs). These can change after you purchase the unit. Can you talk about where the contract collides with the intent of S.B. 182? Clearly, there are practices you believe should not be permitted in HOAs throughout the State. On the other hand, if I buy into an HOA, I am going to be on notice that those practices exist. Please talk about how we are to draw the line between what it says in the CC&Rs, but nonetheless it should not be permitted.

SENATOR SCHNEIDER:
I did allude to that in my opening statement, Mr. Chair. I understand how important contracts are in a real estate transaction. However, HOAs are quasi-governments. I do not think a contract can get in the way of people's rights in a government. At that point, contracts need to come in second. Contracts should be set aside because we all have rights.

Homeowners' associations were started in the early 1900s as a way of discrimination. In the late 1940s in Las Vegas, a HOA spelled out in its CC&Rs that African Americans, Hispanics or Chinese could not come into the HOA. If they did come in, it was only to work, and they had to enter the backdoor. This

practice is blatantly unconstitutional. When you operate along those lines, we have to look at these HOAs as governments.

SENATOR COPENING:
Can you speak to how you crafted the language? Was there a group of homeowners from various HOAs throughout the area, or was there a group of homeowners from one particular HOA who worked with you?

SENATOR SCHNEIDER:
When I receive calls on an issue that keeps coming up, I refer that issue to Scott Young, Principal Policy and Special Projects Analyst, Research Division, Legislative Counsel Bureau. Mr. Young tracks those issues, and when he sees an ongoing problem, we sit down and craft the language for the ongoing issues.

I would like to point out that section 5 of S.B. 182 accommodates Senator Randolph Townsend. Section 6 accommodates Senator Townsend and me for Hidden Valley Homeowners' Association. Section 14 was crafted for a constituent, Mark Coplensky. Section 22 accommodates Senator Townsend. Section 28 accommodates Senator John J. Lee for the Rancho Haven Park Association.

CHAIR CARE:
If you want to make any comments about S.B. 183 as a stand-alone bill and any references at the request of other parties, please do so.

SENATOR SCHNEIDER:
Senate Bill 183 also addresses HOAs. It is essentially A.B. No. 396 of the 74th Session, with certain changes. Everything I said about S.B. 182, its preamble and goal of protecting homeowner rights, applies equally to S.B. 183.

A major difference between S.B. 182 and S.B. 183 is that S.B. 183, in its prior version as A.B. No. 396 of the 74th Session, was fully discussed in both Houses, passed by both Houses and vetoed by the Governor. By contrast, my HOA bill, S.B. No. 362 of the 74th Session, the basis for S.B. 182, was never accorded a hearing. The provision that caused the Governor to sacrifice everything in A.B. No. 396 of the 74th Session and all the good it would have done for homeowners is not in S.B. 183. This was the provision about using shutters on condominiums; the Governor thought that resulted in an unconstitutional "taking" of common property.

While there are a few sections common to both bills this Session, the two measures contain different provisions. All are aimed at improving participation in HOA functions by homeowners and reforming abuses that occur in some HOAs. Senate Bill 182 and S.B. 183 are not duplicates. Both bills should be enacted to ensure that citizens who live in HOAs are guaranteed their associations, which are a form of government, will operate fully and completely according to constitutional principles common to all free governments.

I have prepared a section-by-section explanation of the purpose and intent of each section in S.B. 183 and would appreciate having it included in the record. It is contained in your binders, Exhibit D. I request the deletion of sections 1 and 45 of S.B. 183 dealing with solar panels. Instead, use the language from S.B. 114, which has already been passed by the Senate.

SENATE BILL 114: Makes various changes relating to systems for obtaining and using solar energy and other renewable energy resources (BDR 58-380).

The amendatory language in S.B. 114 removed the new provisions in regard to wind systems and left the *Nevada Revised Statutes* provisions as they currently exist.

Also included in your binders is background information regarding section 6 of S.B. 182 and section 7 of S.B. 183, Exhibit D. These sections are the same and address a legal dispute that arose with the Real Estate Division over whether CC&Rs alone, as opposed to common elements, are enough to bring a development within the purview of NRS 116. Because this was a complex issue, I have provided several opinions from the Legislative Counsel Bureau Legal Division and the Office of the Attorney General. This information is behind the tab labeled Background 1, Exhibit D.

There is also a tab labeled Background 2, Exhibit D. This tab contains material regarding section 21 of S.B. 182 and section 24 of S.B. 183. These two sections are similar but not identical. Section 24 of S.B. 183 is preferable because it has some added language tying any assessment to the statutorily required reserve study. As you process the two bills, I recommend you substitute section 24 of S.B. 183 for the corresponding provision in S.B. 182.

The material in tab Background 2 of Exhibit D consists of a Legislative Counsel Bureau Legal Division Opinion Letter dated July 12, 2007, addressed to me.

This opinion makes it clear that existing law allows HOA executive boards to levy assessments without putting the assessment to a vote of the HOA membership. When the Governor vetoed A.B. No. 396 of the 74th Session, he suggested in his veto message that the bill contained provisions which would change existing law and allow increased assessments without homeowner participation. The provision he referred to is essentially the same provision now in section 21 of S.B. 182 and section 24 of S.B. 183. The provision in A.B. No. 396 of the 74th Session did not change existing law. It simply clarified existing law, just as sections 21 and 24 of the present bills do.

The reason this issue needs clarification is that some people have maintained that an executive board must get approval before it can levy an assessment to adequately fund the reserves. This is tantamount to saying the Legislature must put the State budget to a vote of the people before it can be funded. Apparently, there was even an arbitrator's decision to this effect. Without elaborating, you can imagine how paralyzing it would be to maintenance and repair efforts in a HOA if the board was unable to secure enough votes to fund the statutorily required reserve accounts.

For the sake of completeness, I have included a copy of the A.B. No. 396 of the 74th Session veto message in your binders, Exhibit D.

Senator Lee requested the provision in S.B. 183, section 12, subsection 2. Section 23 is a section for Senator Washington for the Rainbow Bend in Lockwood. Section 28 was requested by Senator Townsend. Section 29 was requested by Senator Townsend for John and Kay Sickler. Section 31 was requested by Senator Lee for the Rancho Haven Park. Section 32 is for NV Energy, Southwest Gas and law enforcement for the parking of commercial and emergency vehicles.

CHAIR CARE:
You made reference to the deletions of sections 1 and 45 from S.B. 183. Senate Bill 114 has not passed out of the Senate yet, but has come out of your Committee and there is an amendment being prepared for it.

JENNIFER LAZOVICH (Focus Property Group; Pardee Homes):
An amendment to S.B. 182, identified with Olympia Group (Exhibit E), is designed to be from the master developers. The amendment would allow for members of the board appointed or elected by the membership while it is in

declarant control to be exempt from the provisions referenced by section 2 of S.B. 182. This exemption is needed for the time period when the master developer and the developer of the project are in control of building the project. We do not want to have employees of the developer sitting on the board be guilty of misdemeanors or become felons for acting in their duty as employees of the company. There is a similar provision in section 3, subsection 2 of S.B. 183 with slightly different language. We will support the provision that works for everybody involved.

CHAIR CARE:
We are talking about S.B. 182, section 2. Correct?

MS. LAZOVICH:
Correct. I am referencing the amendment put forth by the Olympia Group, Exhibit E.

CHAIR CARE:
Was the second one S.B. 183, section 3, subsection 2?

MS. LAZOVICH:
Correct. The exemption is already in there.

CHAIR CARE:
Have you had a chance to discuss this with the sponsor of the bill?

MS. LAZOVICH:
Yes, we did.

CHAIR CARE:
And he is agreeable?

MS. LAZOVICH:
Yes.

CHAIR CARE:
Are there any other sections of either bill that you want to address on behalf of your client?

GARRETT GORDON (Olympia Management Services):
To my right is Angela Rock of Olympia Group. We have prepared comments to both S.B. 182 and S.B. 183. I also have an amendment on behalf of Olympia for S.B. 183 (Exhibit F). If it pleases the Chair, Ms. Rock will go through her comments for S.B. 182 and then shift to S.B. 183.

ANGELA K. ROCK (President, Olympia Management Services):
I will discuss various sections of S.B. 182. Section 3 talks about not allowing individuals to tamper or interfere with an election. We are fine with that, but we would like clarification that campaigning activities are not included and candidates are not prohibited from campaigning against their opponents.

We would like the opportunity to work with the sponsor to clarify the scope of section 4. It is possible there may be some unintended consequences, stymieing proper activities.

We would also like the opportunity to work with the sponsor in section 9 because that may become onerous for a board and homeowners.

Section 10 requires a board not waive certain provisions of its governing documents with regard to use restrictions. There are some justifiable instances where boards do make exceptions and need to make exceptions.

We would like the opportunity to work with the sponsor on section 11. Our associations would be glad to work with the Commission for Common-Interest Communities and Condominium Hotels on policies for levying construction penalties. We would like to talk with the sponsor about submitting the construction policy to the Commission on an annual basis or on a one-time basis and then with changes instead of a case-by-case basis.

CHAIR CARE:
While we are on section 11, subsection 3, do you have any thoughts on automatic appeals? They have been the subject of several comments I have received and seem to be peppered throughout S.B. 182 and possibly S.B. 183.

MS. ROCK:
I am not here to speak on behalf of the Commission, but there is a concern with the increased time and the workload automatic appeals would cause the Commission. We are suggesting it might make sense to have each board submit

its policy to the Commission for a review instead of a case-by-case basis automatic appeal. Does that clarify?

CHAIR CARE:
Okay.

MS. ROCK:
Section 12 speaks to a board's ability to levy fines against an owner for the actions of a tenant or third party. We support the language with regard to the third-party issue, but we ask for the opportunity to discuss instances where it does make sense to hold an owner responsible for the actions of their tenant.

CHAIR CARE:
Section 12, subsection 2, paragraph (c) states, "Had an opportunity to stop the violation and failed to do so." If I am going to have a guest in my unit for a week or two while I am out of town, do I have an inherent duty to provide my guest with a copy of the association's CC&Rs?

MS. ROCK:
You bring up a good example of how this can be read either way. We need to work with the sponsor for clarification of meaning.

Section 13 speaks to the requirement that a member of the board be the owner of a unit. We would like the opportunity to clarify that certain homes are owned by trusts and LLCs. This would not exempt those people who occupy those homes and are members of the trust from running for the executive board.

Section 17 speaks to the requirement that executive board meetings be audio-taped with the exception of executive sessions. Nevada Revised Statute 116 allows the homeowners to audio tape as long as they announce in advance these meetings are being taped. We would like the opportunity to work with the sponsor to change the wording so it is workable for both groups. There is validity to the issue.

I would like to refer back to the moment when I spoke about the issue of construction penalties and how it might make sense for associations to submit their construction penalty policy to the Commission. In section 18, it might make sense if the Commission can review the hearing policy of an association. This section allows homeowners being fined to confront their witnesses. That

could be problematic in a few areas. Nevada Revised Statute 116.31175 prohibits a board from making information available about certain unit owners. We would then have to bring homeowners forward who may have pointed out a violation by their neighbor. We have instances in these associations where there are volatile neighbor-to-neighbor disputes. It would not be fruitful for boards to bring these neighbors together in a room and allow one to confront the other. I want to work through the policy language on how to best handle this for everyone's protection.

CHAIR CARE:
On the right to confront the witness, I suppose the practice is if an association or management company gets an anonymous letter, a warning normally goes out to the homeowner giving them an opportunity to fix or cure the problem. Section 18 goes beyond that, bringing the homeowner in before the board for a hearing. Is this correct?

MS. ROCK:
Yes, Mr. Chair. Speaking to the practices of the boards I work with, when we receive an anonymous tip or even one with a homeowner's name on it, we do have practices in place for independent verification. We have inspectors who check out the situation. When we bring a homeowner to a hearing, we have done our research to the best of our ability to avoid bringing in a neighbor and getting into a confrontation.

My comments on section 23 are going to piggyback on my comments on sections 11 and 18. Potentially, associations could submit their collection policy on an annual basis to the Commission instead of going on an automatic appeal on a case-by-case basis.

Section 26 deals with political signs. We ask owners not be allowed to post political signs on the common elements, walls and parks. The signs can cause damage to the landscape, incurring costs to owners. We ask there be some standards in place for prohibiting profanity and a time for removal.

CHAIR CARE:
We have a statute in this State allowing a political candidate to campaign within a homeowner's association, even if it is gated. Am I wrong on that? We had a bill two or three sessions ago allowing political signs in windows. When we discussed political signs, I had a thought at the time, since we are the State

making laws, was there any sort of First Amendment content-neutral issue? In other words, would this apply for all signs?

MS. ROCK:
Speaking to all signs having a time-specific period, this could incorporate "for sale" signs. Certain high-end gated communities which we represent do not permit "for sale" signs. In this economic downturn, you could have a street lined with signs that can decrease property values. Some associations prohibit any signs beyond political signs.

The language in section 35 would prohibit the Commission from awarding prevailing parties attorney fees in matters before the Commission. We ask that the right to receive attorney fees not be deleted. The Commission would be an independent body with certain expertise and training. They would have the skill level to determine when attorney fees are appropriate. There are instances that go both ways. There are abuses by certain boards of directors and abuses by homeowners. I have had instances where homeowners have become abusive in the number of cases and suits they file and the number of times they go to the Real Estate Division or the Nevada Supreme Court and district courts. This is an effective tool, especially when issued by an independent body.

Section 40 will be my last comment on S.B. 182. This section deletes an important right, an important tool of both homeowners and associations. When a homeowner goes to the arbitration process of the Real Estate Division, most parties end up by default in nonbinding arbitration. Once that arbitrator makes a decision, the unhappy party has 30 days to appeal to the district court. If they do not appeal within 30 days, it becomes binding. I have seen arbitrations turn into mini trials. It can become expensive and onerous for both parties. If a homeowner is required to go through a nonbinding arbitration, and in the end it does not become binding, this becomes problematic. I can understand if 30 days is too tight; it would make sense to expand the time to 45 or 60 days.

CHAIR CARE:
Why not try mediation first if both parties agree? If that does not work out, then go to binding arbitration.

MS. ROCK:
As it stands, both parties must select what they prefer, whether it be mediation, binding arbitration or nonbinding arbitration. This allows people the right to

evaluate their case and their adversary. There are cases where both sides are close and amenable where mediation makes sense. I have also seen binding arbitration make sense when the parties are close and willing to go with the arbitrator. There are instances when the parties are worlds apart, and you need the opportunity to have the mini trial and appeal. It does both of those things and takes some of the onus off the court system, which is bogged down with cases. It goes hand in hand with the arbitration requirements already required before you go to district court. It has been a successful program.

CHAIR CARE:
I have not read Senator Schneider's comments. My concern is you may have a homeowner or unit owner who agrees to nonbinding arbitration, not understanding that it might become binding if he or she loses. I am going to guess this is explained to the unit owners before they enter into nonbinding arbitration.

MS. ROCK:
That is an example and possibility that can be rectified in working with the sponsor on ways to better notify homeowners or extend the time period. There are ways to work through this without entirely eliminating the ability to turn a nonbinding arbitration into a binding arbitration. These things can get costly. I have seen them go upwards of $80,000 to $90,000. To think at the end that it is for naught, is onerous for both parties.

CHAIR CARE:
That takes us through S.B. 182. I do see you have an amendment proposed for S.B. 183, Exhibit F. Has the sponsor seen your proposed amendment for S.B. 182?

MR. GORDON:
The sponsor has not seen this exact language, but it is included in our issues list which Ms. Rock has put together. We plan to discuss this with him.

CHAIR CARE:
Let us go to S.B. 183.

MR. GORDON:
You have before you an amendment to S.B. 183 from Olympia Group, Exhibit F. The same language is in Assembly Bill (A.B.) 129.

ASSEMBLY BILL 129: Revises provisions governing common-interest communities. (BDR 10-34)

We have been working with the sponsor of A.B. 129 to flesh out the actual intent of this bill in section 32, subsection 3 of Exhibit F to S.B. 183 states " ... the executive board shall not and the governing documents must not prohibit a person from" and speaks to parking a utility service vehicle. In working through the intent of this language, we think it is for on-call emergency, first-response employees, not just any employee bringing home a utility service vehicle. The first change in the amendment to S.B. 183, Exhibit F, is section 32, subsection 3, paragraph (a) parking an emergency utility service vehicle. In subsection 4, paragraph (d) of Exhibit F, the definition used to be utility service vehicle. We are proposing to change the definition of emergency utility service vehicle to mean any " ... on-call emergency first-response commercial motor vehicle that is providing service at the time the vehicle is parking on the driveway, road, alley or other thoroughfare ... ."

I spoke with Southwest Gas this morning, and they have a recommendation to change the word "providing" to "available to provide." This addresses Olympia Group's concern of the importance of allowing on-call people providing services to bring their vehicle home in order to respond right away, carving out people who bring their vehicle home for a nonemergency or non-on-call purpose.

CHAIR CARE:
If I have a burst pipe, can the plumber park the vehicle in front of my house while he is working on the plumbing?

MR. GORDON:
Yes. Subsection 3, paragraph (a), subparagraph (1) of Exhibit F speaks to a person engaged in the activity. The intent of our amendment, Exhibit F, is for vehicles brought home overnight that would be needed for on-call emergency response services.

CHAIR CARE:
If a homeowner has approval from the HOA's architectural committee to add a room to his/her house, and construction crews will be at the house for a period of time, is this permissible?

MS. ROCK:
I can only speak to our associations, but it is my understanding that the general policy across the Las Vegas Valley is when contractors are engaged in the service, they are permitted to park on the streets. The contractors do not leave their vehicles in the street overnight.

CHAIR CARE:
Do you want to make additional comments about S.B. 183?

MS. ROCK:
The language of section 6 of S.B. 183 speaks to an association's ability of using radar gun determination and the activity of ticketing speeders. Our associations do not use radar guns; however, our boards have asked that we work with the sponsor to find language for a particular problem they confront. Behind gated communities, Metro police officers will not respond to speeding activity. They will not stake out for speeding activity or give tickets. The boards I represent would like a neutral and independent way to determine if someone is speeding. They would like to work with the sponsor in determining a way to hire a company from Metro or finding a method to be certified on radar guns.

Going back to our language from S.B. 182, the owner is responsible for himself but not responsible for a commercial vehicle barreling through the neighborhood. There should be some way to protect the homeowners. We have a number of children living in these gated communities where vehicles are traveling high rates of speed. The parents do not feel there is a way to prevent this from happening.

We would like the opportunity to work with the sponsor on section 12. There is a great intent behind this section, particularly subsection 10 which deals with a homeowner's right to know and understand their account balance, to know and understand where their monies are being applied. We would like language stating that homeowners must be notified of their compliance account balance on a monthly basis. This is something management companies and boards could do and accommodate. Currently, when a homeowner pays monies for their compliance account or fines if their accounts are comingled, the board or association has 30 days to notify them. In one of the associations we represent, there are over 7,000 homes. Some homes falling into disrepair can have up to five violations. This means there could be thousands of violations which might have payment. It is difficult to monitor the system. We have rectified that

because this language is in the last bill. The last two years, we have moved to monthly statements of compliance account balance. This would work to the intent and be manageable.

Section 14 deals with a board member's disclosure at the time the member is running for a seat on the board. We are in full support of this provision. These important disclosures must be made. We would like to work with the sponsor concerning what happens when a board member does not provide proper disclosure. We have situations where people elect to run and do not make the appropriate disclosures. The management company finds itself caught between violating provisions of being in good standing and members threatening defamation if information is published. I want to work with the sponsor on how to balance those rights.

I apologize, but I need to go back to section 39 of S.B. 182. We would like to ask for clarification. This section states a community manager must obtain a bond. We would like to work with the sponsor on the language. I understand it is on a sliding scale based on the funds handled. In our large master plan community, the budget is millions of dollars. We have community managers who make little money, possibly supporting families on their own. We ask that the management company, that has more assets than an individual manager, be allowed to acquire the bond.

MICHAEL E. BUCKLEY (Commissioner, Commission for Common-Interest Communities and Condominium Hotels, Real Estate Division, Department of Business and Industry):

I have been on the Commission since its inception in 2003. The Commission does have some comments on S.B. 182 (Exhibit G). We did not have the opportunity to go through S.B. 183.

The first point the Commission wants to make on S.B. 182 is that the preamble presents an unfair view of associations, Exhibit G. It picks out the problems and does not address the fact that homeowners have responsibilities when they move into an association. There are people who are satisfied with their associations. We recognize that issues of due process and hearings are important and need to be observed by associations.

Some provisions cause us concern. Section 3 stating, "A person who tampers or interferes with ..." is too broad. This is a concern with a number of sections. These provisions are broad. If they are to be the basis of liability, they may create problems. In section 4, we had a concern with the language of a manager or member who "directly or indirectly" and "his opinion." The language is too broad. In sections 3 and 4, these are felonies.

We strongly oppose section 10 of S.B. 182. The jurisdiction of the Commission deals with violations of NRS 116, not just violations of the governing documents. If there is a violation of the governing documents, the parties have to go through arbitration under NRS 38. They do not go to the Commission. They can go to the Ombudsman, who will help homeowners mediate their disputes. The Commission supports mediation in these kinds of disputes. We only deal with violations of NRS 116. According to section 10, if the board does not enforce every violation of the governing documents, they now come to the Commission. Our concern is there seems to be an effort to have the Commission's judgment substituted for the board of directors for the association. The board of directors is a fiduciary entity that has obligation under State law to make these decisions. For example, if a homeowner's weeds are growing and the homeowner lost his job and cannot hire the gardener, this section says the association can not enforce this against them. Associations routinely make arrangements with homeowners for payments, payment schedules or reduced late fees in order to receive payments. Section 10 takes all flexibility away from the board to manage the association.

Section 11 deals with construction penalties. The Commission questions what is to be reviewed. If somebody has violated their construction penalties, do we take evidence, review the documents and have a full hearing or do we just determine if there was notice and a hearing? We are not sure. Right now we are obligated to meet quarterly. If these provisions are passed, we will be meeting more frequently. Construction penalties can be high. It may be cheaper taking time completing your house because you can afford the construction penalties rather than complying with the rules. We would defer to the board.

Section 12, subsection 6 takes the appeal automatically to the Commission. We are not certain what exactly we would be reviewing.

Section 13 states that all board members must be owners. Associations come in all shapes and forms. It may make sense to have a tenant on the board. If a

spouse was not entitled to the property, the spouse could not be on the board. The abuse is in Las Vegas where you have 1 percent undivided interest. Section 13 would not stop the problem. One-size-does-not-fit-all is a problem.

The phrase "interfering with a candidate" in section 13, subsection 9 is too broad and this presents concerns.

In reference to section 16, the Ombudsman made a comment at a recent meeting stating that many issues stem from human behavior, not because we do not have the laws in effect. The broad language interferes, presenting a concern. We had a lot of discussion about section 16, subsection 4, paragraph (c). I am told by one of the Commissioners that I misspoke our position on the period of comment for each agenda item. We heard discussions for and against this issue. I have represented that it should be left to associations. I am told the Commission did oppose that because it creates lengthy proceedings at the board meetings.

Section 18 addresses due process rights at the hearing on fines. The Commission supports those due process rights. We would like to work with Senator Schneider on this section. I am not sure that having an absolute right to bring the media in is helpful because the media is looking for a story, and the media likes conflict. It may be best to leave it up to the board.

Section 23 requires the association to obtain approval from the Commission before foreclosure; we are not sure what we are to approve. Between July 31, 2008, and December 2008, the Ombudsman had 543 notices of sale and 18 actual sales. The question is whether we look at the 543 notices or the 18 sales. The CC&Rs state that an owner must pay assessments. There is a statutory warning that if you do not pay, you will lose your home. There is a requirement that the Ombudsman get a copy of the notice. Now it would have to be approved by the Commission. What more can we do to get across the fact that you have to pay your assessments?

Section 26 deals with political signs in the common elements. Again, one size does not fit all. In a condominium, the common elements are the whole buildings. This would allow you to post signs along the hallways on your floor in addition to the walls in a planned community. The Commission is concerned about how to put up the sign without violating the contractor's warranty.

Section 28 states the association could not interrupt utility services. The Commission thinks this should be limited to essential services. If someone is not paying their satellite bill, we question turning them off.

Section 33 says the Division shall not disclose any information to a person who is the subject of a complaint. If you have a formal complaint filed against you, the Division presently discloses that information to you. It seems ironic that in section 18, a person who is going to be fined has due process rights, but in section 33 when you have the Division investigating, you do not have those disclosure rights. We do not support this provision.

Section 35 deals with attorney fees awarded by the Commission. There may be some misunderstanding. In Commission hearings dealing with violations of the law, if the Commission finds a violation, it will require the person who violated to pay the cost of the proceeding, including some of the Attorney General's costs. We do not typically award fees for being right or wrong; it is the State against someone who has violated. We do not think section 35 makes sense.

CHAIR CARE:
Is there a current regulation, as opposed to statute, giving some discretion for the award of attorney fees? Is that where we are now?

MR. BUCKLEY:
In the chapter, there is a provision allowing us to award attorney fees. It is only the Attorney General we are talking about who represents the Real Estate Division. If the Division brought a case and the person prevailed, I do not know if we could award the complainant the fees.

Section 40 deals with nonbinding arbitration. The Commission does not deal with NRS 38 even though it deals with CC&Rs. It only deals with NRS 116. If you think arbitration is going to be nonbinding and it then becomes binding, this could be a problem. The Commission is supportive of anything that encourages mediation as opposed to arbitration.

CHAIR CARE:
We do have a copy of your proposed amendments, Ms. Dennison. Please take a few minutes to address them. I will then go back to Mr. Buckley on S.B. 183.

KAREN D. DENNISON (Lake at Las Vegas Joint Venture, LLC; American Resort Development Association):
For clarification, I signed in as both for and against. I would like to go on record for both of my clients in support of S.B. 183, as amended earlier this morning by Senator Schneider. We support the bill as a whole. As Senator Schneider testified, S.B. 183 is essentially, with a couple of exceptions, A.B. 396 of the 74th Session passed by both Houses and vetoed by the Governor.

The amendment I proposed (Exhibit H) to S.B. 182 is on behalf of Lake Las Vegas Joint Venture, LLC. These amendments are all taken from S.B. 183; there are similar sections in S.B. 182 which do not have this language. The first two amendments in green, in section 2, subsections 2 and 4 of S.B. 182 are taken from section 3, subsection 2 of S.B. 183. This was spoken to earlier by the Olympia Group. We all have the same idea. I am sure we can work together on the language with Senator Schneider. We want to make certain if a board of directors is employed by the declarant, they are not automatically in the category of self-dealing.

CHAIR CARE:
I do not read that to be the intent.

MS. DENNISON:
We did not either last Session, but we wanted to be certain. Some times these things have a way of being interpreted to fit a situation.

The second amendment is to section 21, Exhibit H. Senator Schneider asked this Committee to amend section 21 to include section 24 language from S.B. 183. This has to do with making certain that before the executive board can establish the reserves without the vote of the owners, it be done pursuant to a study of reserves. This should be done with the thought there is an annual review of the reserve study to make sure there are enough reserves available for the next five years.

The last amendment we have presented, Exhibit H, is a companion amendment found in section 25, subsection 1, paragraph (b) of S.B. 183. It is a companion only in that the prior section talks about making certain there are enough reserves available for the next five years. This is an adequately funded section stating that the reserves shall be adequately funded if the amount of the reserves available for the next five years is sufficient. This is good policy and

was fully vetted last Session by all stakeholders. In these times where associations are struggling to pay their operating expenses, a look forward of five years is adequate.

CHAIR CARE:
We are back to Mr. Buckley and S.B. 183.

MR. BUCKLEY:
I have a few comments on S.B. 183 (Exhibit I). Since the Commission did not have a chance to look at S.B. 183, this is my personal observation.

Section 10 requires the declaration state whether renting or leasing restrictions exist and a statement in plain English identifying the specific obligations of the association with respect to specific common elements. The declaration is like a constitution. It could last for 60 years and is renewable as long as the project is available. We must remember that what might make sense at the beginning might not make sense later on in time. For example, if an association had a pool and later decided to cut back expenses by turning the pool into a park, you would have to amend the declaration. This can be difficult and costly. We met with a man who was concerned and supported this part about identifying the specific things the association had to do. He testified before the Commission. We discovered the declarant basically violated the law because the common elements do have to be described, but it does allow the board flexibility.

A good point was made in section 14 dealing with disclosures by candidates. A question came before the Commission as to whether the board or some other member of the community could make the disclosures that a candidate was in violation by not making proper disclosures. There is an obligation to make disclosures, but what happens if you do not? I read Senator Schneider's introduction on having the Real Estate Division come up with opinions in S.B. 183. The Division does make formal opinions and determinations of how they interpret the law. Sometimes it is not always an easy answer; there may be different answers at different times depending on the circumstances.

Several years ago, the Commission had complaints about board members who met in workshops. There was an allegation that informal workshops were really meetings of the board because the members could talk. We tried to come up with a regulation, but in the end, we could not. The statute says if there is a quorum and the board is doing board things, they have to do the formal process

through the statute. That is good enough because if somebody violates the law, the tools are there. Trying to define it with further regulations does not help.

A number of provisions in S.B. 183 came from the Commission. In 2005, reserve specialists had to be licensed and permitted by the Division. When we tried to do that, it did not make sense. We have been trying to register reserve specialists. That is what this bill does, and we support that.

Section 33 deals with transfer fees. We did not have a chance to meet at the Commission level on these fees. Transfer fees are a difficult question. We need to be aware of different kinds of fees. There are amounts payable for services when somebody wants to sell their unit. The seller goes to the association, and the association prepares a packet. The Commission has regulations on how much you can charge. Some associations state in their declaration that when you sell your unit, you pay a fee of less than 1 percent to the association. The association uses this fee for community activities. Many associations in existence have and use these funds. In these times when associations are struggling for funds, you have associations that depend on these fees for the betterment of the community. If the Commission is to review and help establish these fees, we are not sure what standard we would use.

CHAIR CARE:
I can understand if an association feels a sale is going to cost them money by making copies of certain documents and turning them over to the buyer. Beyond that, it is simple fee generation because someone is selling a house, as I understand the concept.

MR. BUCKLEY:
At seminars, I have heard it discussed that associations would use a small fee of the purchase price to better the community. Some associations require that when you sell your house, you must pay a fee which is then used for the benefit of the homeowners. If the association is deprived of those fees, the association will increase the normal assessments all homeowners pay.

CHAIR CARE:
If I sell my house the buyer will continue to pay the general and special assessments.

MR. BUCKLEY:
That is true, Mr. Chair. The transfer fee is similar to a closing cost.

Senator Schneider spent a lot of time addressing the definition of a common-interest community. The Commission is aware of the Deputy Attorney General's opinion that if you have any CC&Rs, you are a common-interest community. Provisions in S.B. 182 and S.B. 183 try to negate this idea. The Commission supports the point of view that having CC&Rs does not make a common-interest community. As a member of the State Bar Property Section, we have a proposal where we adopt a definition of a common-interest community based on the Uniform Act. This would be a more superior way to address this issue.

SENATOR PARKS:
If you are in a subdivision calling itself a homeowners' association because it is 45 years old but does not have any CC&Rs, would it be a common-interest community?

MR. BUCKLEY:
Under the definition of guidance from the Office of the Attorney General to the Real Estate Division, I would say yes. It is a difficult question. When NRS 116 was adopted, it excluded everything before 1991. Later, it applied to everybody. Nevada Revised Statute 116 requires having a declaration which notes specific requirements of what you have. You could be a common-interest community, but if there is no declaration, I am not sure what the community would be.

CHAIR CARE:
I ask those of you who support the bill to approach Senator Schneider, the sponsor of the bill, and see if you can agree on common language for both S.B. 182 and S.B. 183. We may have to create a subcommittee at some point, but it would be helpful if somebody could come back to us in a week or so and let us know that you have agreed on these provisions of S.B. 182 and S.B. 183.

STUART L. POSSELT:
I live at 1611 Downs Drive in Skyline Ranch, a common-interest community. I am a retired architect with over 30 years experience in real estate and real estate development. I started and managed five homeowners' associations.

During the 2007 Legislative Session, I testified before the Senate Committee on Commerce and Labor and the Assembly Committee on Judiciary concerning a serious consumer protection matter lacking in NRS 116.2105. At that time, no one objected to my proposal and no concern was raised by any Committee members or the public.

When I bought my home, I read all the documents given to me. The sales plan and tentative budget were missing. After reading all the documents and finding no indication, I asked the marketing director what the association was responsible to maintain. The answer was, "Some drainage facilities." I asked the question again only to receive the same answer. I wrote a letter to the developer and received no answer. At the first board meeting, I asked the president of the association and received no answer. At the next meeting, a map with green areas on it was waved in the front of the room. When I asked to view that map, it suddenly disappeared. I asked the map be reduced and sent to all the homeowners, but nothing was done.

No provision in any of the documents that clearly and constructively notifies a prospective buyer of what his homeowner association is responsible to maintain. It may have been in the budget, but I was not given the budget until one year after I bought my home. Suddenly, not only were there drainage facilities to maintain but an equestrian trail and two large retention basins located on private lots that needed maintenance. According to the CC&Rs, these were the homeowners' responsibilities. When the homeowners' association refused to accept them, the developer sued us, costing tens of thousands of dollars in legal fees. Finally, both sides agreed to drop the matter.

Section 10, subsection 2, paragraph (m), subparagraph (1) and subparagraph (2) of S.B. 183 require constructive notice to the prospective buyer of what he will be responsible to maintain. When I was not given all the required documents, I filed a complaint with the Real Estate Division. It took me a long time to get them to accept it as a formal complaint. When they finished, they slapped the hands of the developer. This was just one of several violations of the NRS that I cited.

Assembly Bill 396 of the 74th Session was introduced on the floor on the last day of the 2007 Legislative Session. It was approved by both Houses, but the Governor vetoed it. I am glad to see that S.B. 183 is a rewrite of A.B. 396 of the 74th Session, with the objectionable provisions removed. I strongly urge

you to adopt section 10, subsection 2, paragraph (m), subparagraph (1) and subparagraph (2), and pass it on to the full Assembly, Senate and the Governor for approval.

In regard to the transfer fees, they are used to pay for the copying of the documents handed over to the buyer because the seller normally does not have them.

CHAIR CARE:
Let us move to Las Vegas now. I believe you signed up for S.B. 182. It will help the Committee if you can focus on a particular section.

ERIC FICHTENBAUM:
I will address S.B. 183, sections 10 and 30. Senator Schneider spoke of abuses by homeowners' associations. I have been in contact with Senator Schneider. I own two rental units in America West Village, managed by RMI Management, LLC. I purchased the first unit nine years ago. Whenever a tenant leaves, I copy the CC&Rs on my fax machine. Last year, I received a letter stating the board of directors made a resolution that everybody's unit had to be registered. I am charged $135 for a new book containing the CC&Rs, even though the information has not changed.

If my tenants should stay, I am charged $75 to fill out an intrusive questionnaire asking the tenant's age, e-mail address, cell phone number, work number and emergency contact. This information goes to a company in Kansas. If I do not comply, I am threatened with a $100 fine. Why do I need to pay for this? This is blatant abuse and extortion.

CHAIR CARE:
Is it your belief the association should not be notified at all when a tenant has moved into your unit? You do not have difficulty with that, I suppose, but the extent of what they are asking you to do. Is this correct?

MR. FICHTENBAUM:
I do not have a problem with filling out a questionnaire. In other communities where I have rental units, I receive a simple questionnaire. I fill it out and send it back. The tenant does not have to do anything; I do not have to answer questions about their age.

For the first eight years of working with RMI, I did not have pay $135 for another copy of the CC&Rs or fill out the questionnaire about my tenants. This started last year when the board made a resolution. When I purchased these homes, I understood I had to give my tenants CC&Rs and rules, but I do not see why I have to pay for another book. In this down economy, I have to pass these costs along. Somebody has to pay for these unnecessary costs. This is abuse and extortion.

CHAIR CARE:
Do you have an objection to a reasonable fee notifying the tenant of the CC&Rs?

MR. FICHTENBAUM:
I purchased my original copy of the CC&Rs when I bought the house. If I was to lose that copy, I can call RMI Management on my own and get a copy, but that is my choice. I have to get a new copy whenever someone leaves even though my copy is good.

CHAIR CARE:
Please get a copy of those questionnaires to our staff (Exhibit J). I would like to see what they say.

Let us come back to Carson City to those who signed up to testify against S.B. 183.

RICHARD L. MARTINEZ (Dayton Valley Community Association):
I am a homeowner in the Dayton Valley Community Association. I am also a member of the board as well as the Safety Committee. I want to talk about the rules and regulations and our ability to enforce sanctions against the people unwilling or unable to abide by the rules. At least 95 to 98 percent of the people receive copies of the CC&Rs and comply with the rules. Some people do not abide by the rules, jeopardizing the safety and lives of the other residents. This raises many concerns. I want to revert back to one section to bring us back into compliance with the rules. The preamble to S.B. 182, referred to by Senator Schneider, talks about the purpose of preserving neighborhoods and creating a desirable place to reside.

> … Whereas, The Nevada Legislature previously noted that planned communities are governed by specific rules and regulations by the unit-owners' associations; and Whereas, the Nevada Legislature

> previously noted that a unit-owners' association is the form of self government closest to the people ... .

In the past, associations may have had a history of abuse of power. I am not aware of any abuse under the association I am associated with, but it talks about the important aspects of a person's life, that being the residents. We do not want to violate the rights of people, but we are concerned about the rights of the 95 percent and 98 percent of the people abiding by the rules and regulations. These people are mad and upset that they are living in a community where other people are violating their rights. We want to follow due process, but what do I tell these people? I hear complaints every day about the abuses directed toward them by their neighbors who do not want to abide by the rules. We do not want our hands tied anymore than they already are.

I do not understand why section 5, subsection 1 is in S.B. 183. It reads:

> The executive board of a common-interest community shall not, and the governing documents of a common-interest community must not, restrict, prohibit or otherwise impede the operation of a motorcycle if the motorcycle is operated on any road, street, alley or other surface intended for use by a motor vehicle.

Section 5, subsection 2 reads:

> The provisions of this section do not preclude the governing documents of a common-interest community from reasonably restricting the parking or storage of a motorcycle to the extent authorized by law.

I like that. I do not care where the vehicle is parked. My concern is for the safety of the residents and for the drivers violating the speed limits. This is an ongoing problem. Motorcycles are doing wheelies, speeding, not stopping at signs and almost hitting other vehicles and people. Please do not continue to bind our hands so that we cannot deal with the problematic people. It is a very small number, but we have to deal with them. We have to follow the rules and regulations. We follow NRS 116. People are given warnings, and they come to a violation hearing. They are given due process, but we do not want our hands tied any further.

CHAIR CARE:
You do not have an objection to motorcycles, only the operation?

MR. MARTINEZ:
Yes.

CHAIR CARE:
Do you have anything in the CC&Rs that addresses this, the issue of the radar gun aside?

MR. MARTINEZ:
Yes. I can understand the radar gun. We do not use them. Sheriffs only come out to our areas for reckless or drunk driving. It seems that everyone knows you will not get caught for speeding. Therefore, how do we determine how fast they are going?

CHAIR CARE:
The message you want the Committee to have, pursuant to section 5 of S.B. 183, is not to tie your hands.

MR. MARTINEZ:
Yes, and look at our ability to enforce the rules and regulations. We do have due process. We try to make sure these people's rights are taken care of, but some continue to not care and continue to abuse.

CHARLIE DUKE (Dayton Valley Community Association):
I am the President of Dayton Valley Community Association. I have been associated with the Association for nine years. I have seen the development grow from 138 homes to over 600 homes. The developer has gone into bankruptcy. We moved into the Association for specific reasons; nobody forced us to move. Everyone has been given a copy of the CC&Rs. The proper place for both S.B. 182 and S.B. 183 is in the trash. Nevada Revised Statute 116 has all the necessary provisions

I came to Nevada in 1999. I have friends who live in other associations in the State. I made some inquiries when I found out about these bills. The general consensus of the people I spoke to living in communities with homeowners' associations is that they are pleased with the associations. They use the

Ombudsman as a means to rectify any problems they have within their associations.

Regarding the vague reference about tampering and interfering with an election, if I tell someone to vote for a candidate, is that tampering or interfering with an election? That is a Class C felony. I spent 29 years in law enforcement. One of the things I experienced is rules are made for about the 5 percent of the people who mess up. Ninety-five percent of the associations are doing a good job. Why do we have to make legislation for 5 percent of the associations?

The Dayton Valley Community Association started in 1991. Until 2005, we did not have any legal fees until a family moved in, filed two complaints and went to the Ombudsman. After meeting with the Ombudsman, the Association was exonerated of the first complaint. We now have $15,000 in attorney fees. We should have a right to collect those fees on frivolous and bogus complaints.

I am against S.B. 182 and S.B. 183. Nevada Revised Statute 116 covers what we need to do.

CHAIR CARE:
Let us go to Las Vegas to those who want to speak against either of the bills.

MIKE RANDOLPH:
I am against section 10, subsection 3 of S.B. 182, which states, "The executive board may not waive or refuse to enforce any provision of the governing documents." We have several pieces of property in a number of associations of which I am affiliated. At this time, there is no financing money. The board would like to avoid charging owners construction delay penalties because they cannot afford to build at this time in this market. If S.B. 183 is approved, I have no choice but to charge them the construction penalties listed in the CC&Rs. The board would like to run our own association. Construction is not a plausible idea in this market. I should not be forced to charge my neighbors' construction delay penalties because there is no construction taking place. They cannot afford it, so it makes no sense for them to be charged.

I am also against section 23, subsection 10 of S.B. 182, which reads, "The association must obtain approval from the Commission before attempting to foreclose its lien pursuant to the provisions of NRS 116.31162 to 116.31168, inclusive." It would be onerous of the Commission to have to respond to this.

The preponderance of foreclosures and lien collection in Nevada, due to nonpayment of assessment, is done by law firms and collection agencies highly regulated by either the Nevada State Bar or the Division of Financial Institutions. A complaint with one of the items not taken care of is immediately addressed through one of those agencies. The Common-Interest Communities Commission would not want to meet weekly to deal with allowing foreclosure for nonpayment of assessment. The law is clear; the homeowners must pay. Nevada Revised Statutes 116.31162 to 116.31168 spell out the necessary steps.

CHAIR CARE:
The point has been hammered home by e-mails I have received and testimony we have heard this morning.

JONATHAN FRIEDRICH:
I live at 2405 Windjammer Way in Las Vegas. I am a resident in a 116-unit homeowners' association. I will divide my remarks into three sections (Exhibit K).

I have become a homeowners' advocate, not by choice but by chance. I had to sue my association for denying me my basic rights. Senator Schneider referred to me indirectly when speaking of an arbitration case over special assessment without a vote of the homeowners. Those items dealing with special assessments without a vote of the homeowners, despite the CC&Rs, are back in these two bills. As a result of the newspaper coverage of my legal battle two years ago, I have been contacted by many others seeking guidance and help who feel they have been abused and victimized by their board. You can give us that help.

Senate Bill 182 and S.B. 183 are evil bills. Much of the same language contained in these two bills was passed in A.B. 396 of the 74th Session on the last night of the Session. The Governor vetoed that bill. The second day of the present Session, the Assembly unanimously voted to sustain that veto. This says a lot about the bills before us today. I would like to read what the Legislature has stated in the past about homeowners' associations. This is from the preamble to S.B. 182:

> Whereas, The Nevada Legislature previously declared that the homeowners have the right to reside in a community without fear of illegal, unfair, unnecessary, unduly burdensome or costly

> interference with their property rights; and ... Whereas, The form of self-government of a unit's unit-owners' association includes legislative, executive and quasi-judicial powers and function[s].

That last portion allows a board to be the judge, jury and the executioner. These words are not mine. They are yours and fellow members of this great institution of the Nevada Legislature. Ironically, these words are contained in the preamble of S.B. 182. These two bills go a long way to proving these words to be true.

I spoke with many others not in favor of these two bills who could not be here today. If you check the Share Your Opinion Section on your Legislature's Website, there are 109 votes against and 6 supporting S.B. 182. There were 75 against and 4 supporting S.B. 183. This says a lot for these bills, and it is not in the affirmative.

I have prepared a five-page outline of what I feel is most offensive of S.B. 182 and S.B. 183, Exhibit K. In an attempt to save time, I will only read several sections of Exhibit K.

These two bills should never be allowed to leave this Committee room. Senate Bill 216 , dealing with exterior shutters, will be coming before you soon. This issue was part of A.B. 396 of the 74th Session.

SENATE BILL 216: Revises provisions regarding the addition of shutters to units in common-interest communities. (BDR 10-1078)

Assemblyman Harvey J. Munford has introduced A.B. 350.

ASSEMBLY BILL 350: Makes various changes relating to common-interest communities. (BDR 10-620)

This bill eliminates the evils in S.B. 182 and S.B. 183 and restores rights to homeowners taken away in NRS 116. Nevada Revised Statute 116 has been amended so many times it has become unworkable and difficult to comprehend. It needs to be discarded and a much simpler document created which is fair and just to homeowners.

LINDSAY WAITE (Ombudsman for Owners in Common-Interest Communities, Real Estate Division, Department of Business and Industry):
I maintain neutrality on S.B. 182. With regard to section 34, I want to explain the Office of the Ombudsman. I am concerned about the time constraints placed on my office's functions. As the Ombudsman, my primary function is to offer residents and homeowners' associations opportunities to have an informal mediation conference. Intervention affidavits are filed. If there is no conference and people want to have an investigation of a violation of law, then matters go to our Compliance Section. The proposed law places a 45-day time frame on an investigation and coming to a conclusion if there is good cause to pursue a case. The nature of what we do requires us to have an appropriate amount of time to be effective.

I started this conferencing program two and a half years ago when I became Ombudsman. When people have complaints in their associations, there can be anger and distrust. A document is filed, and I review the files to determine the issues are under our statute and that proper notice has been given to the other side. We make an effort to get those involved to come into the office to meet. Trying to get hostile people to sit together at a table can be a mini negotiation. When there is agreement, conferences may last from one and a half to three hours. When they agree to meet with me, we may resolve about half of the concerns in the communities. Not only does it take a period of time to get parties to the table, but when there is an agreement, the board representative or manager has to schedule a board meeting and get a consensus on the agreement. Sometimes, the board meets only every 90 days, so we wait for a period of time.

I only have conferences in Carson City every 12 weeks. If a 30-day time limit is placed on what I do, I could not have personal conferences here. I could only have conferences by phone, and this is not the best way to resolve a problem. Our process has been successful. If people do not want to meet when there are violations of law, or if they do meet and we cannot reach a resolution, then they go to the Compliance Section.

I have provided copies of a three-section report (Exhibit L, the original is on file in the Research Library). Item 1 is a biennial report. Item 2 explains in greater detail what my staff and I do to get these conferences started. Item 3 is the summary of Bruce Alitt's investigative process. Mr. Alitt is our Chief of Compliance in Las Vegas. If you look at getting to the compliance section, the

45-day time limit would cause difficulty in getting a good investigation. His report addresses this issue. When a case about an alleged violation of the statute is opened, communication with all respondents is needed. Every board member is entitled to be told what they are accused of. Information has to be gathered and analyzed by staff, which takes time. Decisions need to be made, sometimes in conjunction with discussions with legal counsel, to see if there is good cause to prosecute before the Commission.

When dealing with people in conflict, there can be resistance. I have resistance in getting people to meet, and the Compliance Section has resistance in getting people to provide information. In order for us to be effective, we ask you to consider not having those time frames. Getting an intervention affidavit to conference takes about eight weeks. Investigations may take up to nine months or longer, depending on the nature of the allegations. We are effective in resolving concerns when we can or pointing people in the right direction if their complaints cannot be handled by our process. We are effective in investigating the proper violations of law and getting them to our Commission.

BILL UFFELMAN (Nevada Bankers Association):
It is our belief that section 27 of S.B. 183 should be deleted. If you were to process it, as written, it would not provide for any payment of interest for the 120 days that a presumed purchaser has maintained the property prior to any right of redemption. Overall, the section needs to be deleted from the bill.

CHAIR CARE:
We will close the hearing on S.B. 182 and S.B. 183. I am sorry not everyone was able to testify. I will take any comments you wish to make in writing. Committee, we are adjourned at 10:59 a.m.

RESPECTFULLY SUBMITTED:

Janet Sherwood,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: